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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Uniform Issue List: 9100.00-00; 408A.00-00

JAN 22 2007

T:EP:RA:TY

**Legend:**

Taxpayer A =

Custodian M =

Amount A =

IRA X =

IRA Y =

Dear :

This is in response to your request dated November 19, 2006, as supplemented by correspondence dated January 4, 2007, in which you request relief under section 301.9100-3 of the Procedure and Administrative Regulations (the "Regulations"). The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

In December 2005, Taxpayer A requested that Amount A be transferred from IRA X, a traditional IRA described in section 408 of the Internal Revenue Code (the "Code"), to IRA Y, a Roth IRA described in section 408A of the Code, as a Roth IRA conversion. In early 2006, Taxpayer A received a 2005 Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., from Custodian M, indicating a distribution of Amount A as a recharacterized contribution with respect to IRA X. Taxpayer A concluded from the Form 1099-R that the conversion had failed to take place, because the Form 1099-R reported no taxable amount. Taxpayer A prepared his 2005 Federal Income Tax Return according to the information on the Form 1099-R.

On October 13, 2006, Custodian M e-mailed Taxpayer A a corrected Form 1099-R, reporting Amount A as a Roth IRA conversion amount. A hard, paper, copy of the

Form 1099-R was not received until after the extended deadline for filing Taxpayer A's 2005 Federal Income Tax Return.

Immediately upon receiving the e-mailed Form 1099-R, Taxpayer A consulted with his tax advisors and authorities and re-evaluated his tax position. Late in the day on October 14, the last business day before the filing deadline, Taxpayer A concluded that his adjusted gross income for 2005 exceeded the limit for making an IRA conversion set forth in section 408A(c)(3)(B) of the Code. By this time, Custodian M was closed and Taxpayer A was unable to reverse the conversion before the deadline for filing his 2005 Federal Income Tax Return.

The statute of limitations on Taxpayer A's 2005 Federal Income Tax Return remains open.

Based on the foregoing facts and representations, you have requested a ruling that, pursuant to section 301.9100-3 of the Regulations Taxpayer A may be granted a period not to exceed 60 days from the date of issuance of this ruling to make an election under section 1.408A-5 of the Income Tax Regulations (the "I.T. Regulations") to recharacterize Amount A as a contribution to a traditional IRA.

With respect to your request for relief under section 301.9100-3 of the Regulations, section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations provide that, except as otherwise provided by the Secretary, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having been made to another type of IRA by making a trustee-to-trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not the transferor IRA. Under section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations, this recharacterization election generally must occur on or before the date prescribed by law, including extensions, for filing the taxpayer's Federal Income Tax Return for the year of contribution.

Section 1.408A-5, Q&A-6, of the I.T. Regulations describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that has been converted from a traditional IRA to a Roth IRA: (1) the taxpayer must notify the Roth IRA trustee of the taxpayer's intent to recharacterize the amount, (2) the taxpayer must provide the trustee (and the transferee trustee, if different from the transferor trustee) with specified information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer.

Section 408A(c)(3) of the Code provides, in relevant part, that a taxpayer generally is not allowed to make a rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during any taxable year if the taxpayer's adjusted gross income for that year exceeds \$100,000.

Section 408A(d)(3)(C) provides that a conversion of a traditional IRA to a Roth IRA is treated as a rollover from the traditional IRA to the Roth IRA.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Regulations, in general, provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in his discretion, may grant a reasonable extension of the time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for the making of an election or application for relief in respect of tax under, among others, Subtitle A of the Code.

Section 301.9100-2 of the Regulations lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in section 301.9100-2. The relief requested in this case is not referenced in section 301.9100-2.

Section 301.9100-3 of the Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(ii) of the Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to elect to recharacterize the Roth IRA on or before the date prescribed by law, including extensions, for filing his Federal Income Tax Return for the year of contribution, was caused by his lack of awareness of the necessity of making an election as a result of Custodian M failing to provide an accurate

and timely Form 1099-R until just before the filing deadline, thus making it impossible for Taxpayer A timely to elect to recharacterize his Roth IRA conversion back to a traditional IRA.

Based on the above, Taxpayer A meets the requirements of section 301.9100-3(b)(1) of the Regulations, clause (iii), for the 2005 tax year. In addition, since the statute of limitations is still open, under section 301.9100-3(c)(1)(ii) of the Regulations, granting relief will not prejudice the interests of the Government.

Accordingly, Taxpayer A is granted an extension of 60 days as measured from the date of the issuance of this ruling letter to recharacterize Amount A as a contribution to a traditional IRA.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you wish to inquire about this ruling, please contact \_\_\_\_\_, Esq.  
(ID # \_\_\_\_\_) at ( \_\_\_\_\_ ) Please address all correspondence to  
SE:T:EP:RA:T4.

Sincerely yours,



Donzell H. Littlejohn, Manager,  
Employee Plans Technical Group 4

Enclosures:

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Notice of Intention to Disclose, Notice 437